St. John's Law Review

Volume 30
Number 1 *Volume 30, December 1955, Number 1*

Article 11

May 2013

Insurance--Statute of Frauds No Defense to Party Fraudulently Obtaining Policy from Oral Assignee (Katzman v. Ætna Life Ins. Co., 309 N.Y. 197 (1955))

St. John's Law Review

there is an adequate remedy at law. However, the extreme brevity of the opinion inhibits a clear understanding of the rationale. The Court mentions that a contract to sell land is specifically enforceable "though the defendant's sole obligation is to pay money." If this allusion was intended to justify the decision on the ground that a construction loan agreement is analogous to a contract to sell land, then perhaps the decision may be regarded, not as a startling departure from precedent, but as adopting the view taken in the *Columbus* case.

INSURANCE — STATUTE OF FRAUDS NO DEFENSE TO PARTY FRAUDULENTLY OBTAINING POLICY FROM ORAL ASSIGNEE.—The insured's widow claimed the proceeds of a life policy in which her sister-in-law, the defendant, was noted as beneficiary. The plaintiff-widow asserted that her deceased husband orally assigned and delivered the policy to her, at which time she was the named beneficiary, and that she thereafter made substantially all premium payments. She further alleged that the decedent secretly removed the policy from her possession, changed the beneficiary, and gave it to the defendant with whom he had conspired. The defendant contended that the oral assignment was unenforceable under the statute of frauds. The Court *held* that the plaintiff would be entitled to the proceeds of the policy if the allegations were proven. *Katzman v. Ætna Life Ins. Co.*, 309 N.Y. 197, 128 N.E.2d 307 (1955).

An insurance policy is a chose in action.[1] Before the enactment of Section 31, subdivision 9, of the Personal Property Law,[2] it was well settled in New York that a policy was orally assignable.[3] In most other jurisdictions such an assignment is still recognized.[4] For

---

[1] Steinback v. Diepenbrock, 158 N.Y. 24, 52 N.E. 662 (1899); Matter of Pastore, 155 Misc. 247, 279 N.Y. Supp. 200 (Surr. Ct. 1935).

[2] "Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking;

". . . .

"9. Is a contract to assign or an assignment, with or without consideration to the promisor, of a life or health or accident insurance policy, or a promise, with or without consideration to the promisor, to name a beneficiary of any such policy. This provision shall not apply to a policy of industrial life or health or accident insurance." N.Y. PERS. PROP. LAW § 31(9) (effective March 11, 1943).

[3] Marcus v. St. Louis Mut. Life Ins. Co., 68 N.Y. 625 (1877); McGlynn v. Curry, 82 App. Div. 431, 81 N.Y. Supp. 855 (2d Dep't 1903).

[4] See Loth, *Gifts of Life Insurance*, [1945] INS. L.J. 515, 517; 25 MISS. L.J. 72 (1953). *Contra*, Steele v. Gatlin, 115 Ga. 929, 42 S.E. 253 (1902).

an effective assignment prior to the enactment of subdivision 9, delivery was virtually essential. Almost all the policy assignments claimed were gifts,[5] and delivery is necessary for a valid gift.[6] Though an attempted assignment for consideration also failed in a case where there was no delivery,[7] it seems that evidence of comparable weight would have been sufficient to establish such an assignment.[8]

Possession under claim of delivery is ambiguous, however, since a policy must fall into the possession of another at the time of the insured's death.[9] As a corollary, the person best able to refute a claim of oral assignment is unable to defend.[10] That such a situation was an invitation to fraud is evidenced by the large number of actions which were brought based on oral assignment.[11] The final impetus to legislative correction was the admission of oral evidence in *Mitchell v. Mitchell*[12] to prove a promise to name as beneficiary a party other than the one named in the policy. To adequately remedy this situation, a statute that would apply to executed as well as executory transactions was required.[13] Though such a statute is a novelty in New York, its wording and legislative history clearly indicate that subdivision 9 of Section 31 was intended to cover even executed transactions in order to meet this need.[14]

The statute rendered unenforceable a promise to name a beneficiary, a contract to assign or an *assignment* of a life insurance policy, unless in writing.[15] In *Siegel v. Tankleff*,[16] Justice Froessel held that a gift of a policy completed by delivery prior to the enactment of the statute was valid. He implied, however, that delivery after the effective date of the statute would not suffice. Subsequently, in

---

[5] See, *e.g.*, cases cited note 3 *supra;* Young v. Prudential Ins. Co., 131 N.Y. Supp. 968 (Sup. Ct. 1911).

[6] Matter of Van Alstyne, 207 N.Y. 298, 100 N.E. 802 (1913); Jackson v. Twenty-third Street Ry., 88 N.Y. 521 (1882).

[7] See Ward v. New York Life Ins. Co., 225 N.Y. 314, 122 N.E. 207 (1919).

[8] *Ibid.*

[9] Katzman v. Ætna Life Ins. Co., 309 N.Y. 197, 128 N.E.2d 307 (1955) (dissenting opinion).

[10] *Ibid.* For a discussion of this problem in an analogous situation, see Hamlin v. Stevens, 177 N.Y. 39, 48, 69 N.E. 118, 120-21 (1903).

[11] See, *e.g.*, Ward v. New York Life Ins. Co., *supra* note 7; Considine v. Considine, 255 App. Div. 876, 7 N.Y.S.2d 834 (2d Dep't 1938).

[12] 265 App. Div. 27, 37 N.Y.S.2d 612 (1st Dep't 1942), *aff'd mem.*, 290 N.Y. 779, 50 N.E.2d 106 (1943).

[13] See Brief for the New York State Ass'n of Life Underwriters as Amicus Curiae, p. 15, Katzman v. Ætna Life Ins. Co., 309 N.Y. 197, 128 N.E.2d 307 (1955); Superintendent of Insurance's Memorandum to Governor concerning Assembly Int. No. 473, Prt. 486, p. 1 (1943) (The New York State Ass'n of Life Underwriters sponsored the statute and its counsel drafted the measure. The Superintendent of Insurance submitted the memorandum in support of the bill.).

[14] *Ibid.* See note 2 *supra.*

[15] See note 2 *supra.*

[16] 95 N.Y.S.2d 178 (Sup. Ct. 1949).

McNamee v. Griffin,[17] delivery was held ineffective to remove an assignment from the operation of the statute. In the instant case the Appellate Division [18] was of the same view, Justice Cohn dissenting.

Justice Cohn proposed that a constructive trust be imposed upon the policy in the hands of the defendant. The constructive trust is an equitable remedy designed to prevent unjust enrichment.[19] The number of situations giving rise to such a trust are virtually limitless.[20] A wrongdoer can be made a trustee of property acquired by fraud, duress, undue influence, violation of an express trust, or other wrong.[21] Moreover, the statute of frauds will not inhibit the imposition of a constructive trust in the face of clear and convincing evidence of wrongdoing.[22] When a confidential relationship has been breached, a constructive trust has even been applied to conveyances of land.[23] The doctrine will also be utilized to prevent unjust enrichment from the proceeds of an insurance policy fraudulently procured.[24]

In the instant case, the Court of Appeals invoked a constructive trust to correct the asserted wrong. The plaintiff alleged a confidential relationship, conspiracy, payment of premiums with her own money, oral assignment and delivery to her as the named beneficiary. Upon a motion to dismiss, all material allegations of fact are deemed to be true.[25] Although the statute renders an oral assignment unenforceable, the Court held that it is no defense to a party who has fraudulently obtained a policy from an oral assignee. The rationale, however, is not entirely clear from the opinion. The Court did not *expressly* apply a constructive trust. Moreover, the opinion places much emphasis on the delivery of the policy. This emphasis, com-

---

[17] 285 App. Div. 886, 137 N.Y.S.2d 749 (1st Dep't 1955) (per curiam).

[18] See Katzman v. Ætna Life Ins. Co., 285 App. Div. 446, 137 N.Y.S.2d 583 (1st Dep't 1955).

[19] See 3 SCOTT, TRUSTS 2312 (1939); RESTATEMENT, RESTITUTION § 1 (1937).

[20] "Since a constructive trust is merely 'the formula through which the conscience of equity finds expression' . . . its applicability is limited only by the inventiveness of men who find new ways to enrich themselves unjustly. . . ." Latham v. Father Divine, 299 N.Y. 22, 27, 85 N.E.2d 168, 170 (1949). See 3 BOGERT, TRUSTS AND TRUSTEES § 471 (1946).

[21] See BOGERT, TRUSTS §§ 79, 80, 86 (3d ed. 1952); 3 SCOTT, TRUSTS 2327 (1939).

[22] See BOGERT, TRUSTS § 78 (3d ed. 1952); 1 PERRY, TRUSTS AND TRUSTEES § 226 (7th ed. 1929). The theory is not that the trust acts directly upon the instrument if any, but that it acts upon the property itself as soon as the wrongdoer is entitled to it, raising a trust in favor of the rightful owner to defeat the fraud. See Latham v. Father Divine, *supra* note 20 at 30, 85 N.E.2d at 172.

[23] See, *e.g.*, Foreman v. Foreman, 251 N.Y. 237, 167 N.E. 428 (1929); Sinclair v. Purdy, 235 N.Y. 245, 139 N.E. 255 (1923); Hartkopf v. Hesse, 49 N.Y.S.2d 162 (Sup. Ct. 1944).

[24] See 3 SCOTT, TRUSTS §§ 490, 490.1, 490.2 (1939); RESTATEMENT, RESTITUTION § 185 (1937).

[25] See Buckley v. Fasbender, 281 App. Div. 985, 121 N.Y.S.2d 3 (2d Dep't 1953) (memorandum opinion).

bined with a notable lack of a definite conclusion, could lead to an interpretation that the case holds delivery removes an oral assignment from the operation of the statute. Such a proposition, however, would contravene the letter and purpose of the law,[26] and ignore the factual foundation for the instant decision. The Court was fully cognizant of the statutory intendment,[27] and to infer a holding which manifestly defeats this purpose would do a grave injustice to a court of the highest reputation.

The principal decision accomplishes substantial justice, but it does expose the statute to the danger of serious inroads. The case should be strictly limited and freely distinguished, in the absence of clear and convincing evidence of fraud, lest the statute be repealed by judicial fiat.

NATO STATUS OF FORCES AGREEMENT—SECRETARY OF STATE NOT BOUND TO EFFECT RELEASE OF FOREIGN-JAILED AMERICAN SOLDIER.—Relator petitioned for release of her soldier-husband from a French jail, alleging violation of his constitutional right against self-incrimination. Pursuant to treaty,[1] the American soldier had been sentenced by a French court upon a plea of guilty to a robbery charge. The Court of Appeals *held* that under the treaty the Secretary of State had no duty to negotiate for his freedom. *United States ex rel. Keefe v. Dulles,* 222 F.2d 390 (D.C. Cir. 1954), *cert. denied,* 75 Sup. Ct. 440 (1955).

Every citizen who enters the military is deprived of some constitutional protections previously enjoyed. Indictment by grand jury is a right expressly withheld from members of the armed forces by the Constitution.[2] Historically, other rights, such as trial by jury in military tribunals, have been judicially denied.[3] This is partially ex-

---

[26] See Brief for the New York State Ass'n of Life Underwriters as Amicus Curiae, pp. 5, 6, 15, Katzman v. Ætna Life Ins. Co., 309 N.Y. 197, 128 N.E.2d 307 (1955); Superintendent of Insurance's Memorandum to Governor concerning Assembly Int. No. 473, Prt. 486, p. 1 (1943).

[27] See Brief for the New York State Ass'n of Life Underwriters, *supra* note 26.

[1] The treaty entitled "Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces" is found in 99 CONG. REC. 9024-29 (daily ed. July 14, 1953). This agreement, which regulates duties and immunities of troops of one member country stationed within another, is hereinafter referred to as "SOFA" in the interest of brevity.

[2] U.S. CONST. amend. V.

[3] *Ex parte* Quirin, 317 U.S. 1, 40 (1942) (dictum); United States *ex rel.* Innes v. Crystal, 131 F.2d 576, 577 n.2 (2d Cir. 1943) (dictum); see Note, 17 ST. JOHN'S L. REV. 29 (1942).